



Docket No.: 216432US0X DIV

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313



ATTORNEYS AT LAW

RE: Application Serial No.: 10/038,899

Applicants: Kokichi KIKUCHI, et al.

Filing Date: January 8, 2002

For: PEPTIDE CAPABLE OF INDUCING IMMUNE  
RESPONSE TO HUMAN GASTRIC CANCER AND  
AGENT FOR PREVENTING OR TREATING  
HUMAN GASTRIC CANCER, CONTAINING THE  
PEPTIDE

Group Art Unit: 1636

Examiner: KAUSHAL, S.

SIR:

Attached hereto for filing are the following papers:

**Response to Restriction Requirement**

Our check in the amount of **-0-** is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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DOCKET NO.: 216432US0XDIV



**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

ENTIRE APPLICATION OF:

KOKICHI KIKUCHI ET AL

:

: GROUP ART UNIT: 1636

SERIAL NO.: 10/038,899

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FILED: JANUARY 8, 2002

: EXAMINER: KAUSHAL, S.

FOR: PEPTIDE CAPABLE OF INDUCING IMMUNE RESPONSE TO HUMAN  
GASTRIC CANCER AND AGENT FOR PREVENTING OR TREATING HUMAN  
GASTRIC CANCER, CONTAINING THE PEPTIDE

**RESPONSE TO RESTRICTION REQUIREMENT**

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

Responsive to the Official Action dated July 30, 2003, Applicants elect, with traverse,

Group IV, Claim 19.

**REMARKS**

The Examiner has required restriction in the above-identified application as follows:

- Group I: Claims 14-17 and 20, drawn to a vaccine comprising a recombinant virus having DNA encoding a peptide which is a fragment of gastric cancer antigen protein and a method of preventing or treating gastric cancer;
- Group II: Claims 14-17 and 20, drawn to a vaccine comprising a recombinant bacterium having DNA encoding a peptide which is a fragment of gastric cancer antigen protein and a method of preventing or treating gastric cancer;
- Group III: Claim 18, drawn to a method of preventing or treating gastric cancer by administering to a patient an effective amount of a peptide which is a fragment of gastric cancer antigen protein; and

Group IV: Claim 19, drawn to a method of preventing or treating gastric cancer by administering to a patient an effective amount of CTLs which have been activated with a peptide which is a fragment of gastric cancer antigen protein.

Applicants have elected, with traverse, Group IV, Claim 19.

The Office has characterized the inventions of Groups I-IV as unrelated. However, the Examiner's attention is drawn to MPEP §803.02, which relates to examination of Markush groups. Applicants respectfully traverse the Restriction Requirement on the grounds that the Office has not shown that a search or examination of all the members of the Markush group (Groups I and II) would impose a serious burden.

Furthermore, the MPEP states:

"If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire Claim can be made without serious burden, the Examiner must examine all Claims on the merits even though they are directed to independent and distinct inventions". (MPEP §803.02)

The Restriction Requirement is traversed on the basis that the Examiner has not shown a burden would exist in searching all the Claims. The Applicants note that MPEP §803.02 stipulates that the members of the Markush group must be sufficiently few in number. Therefore, Office can not reasonable maintain that a serious burden would be imposed by searching only ten members (Group I-II) of the Markush group.

In addition, MPEP §803.02 requires the Examiner to examine all the Claims on the merits when members of the Markush group are closely related. The Office provides no support for its conclusion that the alternative chemical compounds in the claims are so dissimilar that they fail to meet the requirements of MPEP §803.02 for Markush practice. Accordingly, the Restriction Requirement should be withdrawn.

Applicants traverse the Restriction Requirement on the additional grounds that the Office has not shown that a burden exists in searching all the Claims of the present application.

Further, MPEP §803 states as follows:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

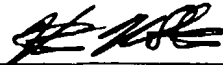
Applicants submit that a search of all claims would not constitute a serious burden on the Office.

For the reasons set forth above, Applicants contend that the Restriction Requirement is improper and should be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
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